

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D.P. MARSHALL JR., JUDGE

DIVISION II

CA06-733

25 April 2007

ODELL POLLARD,
APPELLANT

AN APPEAL FROM WHITE COUNTY
CIRCUIT COURT
[No. CV-2004-329]

v.

ROY NEWMAN, d/b/a NEWMAN
ELECTRIC,
APPELLEE

HONORABLE WILLIAM MILLS,
CIRCUIT JUDGE

DISMISSED

Odell Pollard appeals the circuit court's \$11,000 judgment for Roy Newman. We dismiss his appeal without prejudice for lack of an appealable order.

In 2003, Pollard wanted to build two houses. He hired David Burnett as his general contractor, and Burnett hired Newman to do the electrical work. After Burnett abandoned the project when neither house was finished, Newman filed a lien, and Pollard sued Newman and Burnett. Burnett did not answer Pollard's complaint, and Newman filed a counterclaim against Pollard. After a bench trial, the circuit court awarded judgment to Newman.

At trial, the court granted Pollard's oral motion to non-suit his claims against Burnett, who had gone bankrupt. No order granting the non-suit, however, is in the record. The governing rule and our cases provide that a non-suit is effective only upon entry of an order. Ark. R. Civ. P. 41(a)(1); *White v. Perry*, 348 Ark. 675, 679–80, 74 S.W.3d 628, 630–31 (2002). We

cannot overlook this defect. Whether an order is final, and thus appealable, is a jurisdictional matter. Because the judgment below did not resolve all the disputed issues, and because the circuit court did not certify the judgment pursuant to Arkansas Rule of Civil Procedure 54(b), it is not final and we lack jurisdiction to review it. Ark. R. App. P.–Civ. 2(a); *Downing v. Lawrence Hall Nursing Ctr.*, 368 Ark. 51, ___ S.W.3d ___ (Nov. 16, 2006). We therefore dismiss this appeal without prejudice. When the circuit court enters an order dismissing Pollard’s claim against Burnett, then Pollard can file a new notice of appeal, file a short supplemental record with our clerk, and file updated briefs so we may reach the merits in this case.

Dismissed without prejudice.

PITTMAN, C.J., and MILLER, J., agree.